

**COURT OF APPEALS
DECISION
DATED AND FILED**

August 11, 2016

Diane M. Fremgen
Clerk of Court of Appeals

NOTICE

This opinion is subject to further editing. If published, the official version will appear in the bound volume of the Official Reports.

A party may file with the Supreme Court a petition to review an adverse decision by the Court of Appeals. See WIS. STAT. § 808.10 and RULE 809.62.

Appeal No. 2016AP177-CR

Cir. Ct. No. 2015CM458

STATE OF WISCONSIN

**IN COURT OF APPEALS
DISTRICT IV**

STATE OF WISCONSIN,

PLAINTIFF-RESPONDENT,

V.

TERRY C. CRAIG, JR.,

DEFENDANT-APPELLANT.

APPEAL from a judgment of the circuit court for La Crosse County:
GLORIA L. DOYLE, Judge. *Affirmed.*

¶1 BLANCHARD, J.¹ Terry C. Craig Jr. appeals a judgment entered by the circuit court following his convictions for criminal damage to property,

¹ This appeal is decided by one judge pursuant to WIS. STAT. § 752.31(2)(f) (2013-14). All references to the Wisconsin Statutes are to the 2013-14 version unless otherwise noted.

disorderly conduct, and obstructing a police officer. Specifically, Craig challenges the amount of restitution ordered by the court, arguing that there was preexisting damage to the vehicle that Craig later damaged and that the court should order Craig to pay restitution only for the particular damage that he “directly” caused.

¶2 I conclude that the circuit court did not erroneously exercise its discretion in ordering restitution equal to the value of the damaged vehicle under the facts here. The court reasonably interpreted the pertinent facts and applied one approach to restitution contemplated in WIS. STAT. § 973.20(2). Accordingly, I affirm.

BACKGROUND

¶3 Craig entered pleas to criminal charges based on a domestic disturbance. As pertinent here, at sentencing, the court ordered Craig to pay restitution as a result of the damage he caused to the victim’s vehicle. The defense did not contest that Craig caused some damage to the vehicle, but did contest the extent of the damage. The defense also challenged as unreasonable the amount set forth in the State’s estimate to repair the damage. The court held a restitution hearing to resolve these contested issues and to determine the amount of restitution.

¶4 At the hearing, the victim and her father both testified that the vehicle had preexisting damage when they purchased it for \$1,200. Specifically, at the time that the victim’s father purchased the vehicle there was a hole approximately the size of a baseball or softball in the left quarter panel area and a small, 2-inch crack on the side of the vehicle between the hole and the rear bumper. The victim had not repaired this visible damage before the night Craig committed his offenses.

¶5 On the night of the offenses, Craig intentionally struck the vehicle's left tail light with a wooden object, shattering the tail light and its assembly. The victim and her father testified that, in shattering the tail light and its assembly, Craig aggravated at least to some degree all of the preexisting vehicle damage described above, enlarging the hole, lengthening the small crack, and also creating additional cracks in the same area. Consistent with this testimony, the court determined that Craig's deliberate action not only damaged the tail light and its assembly, but that it also exacerbated to at least some degree preexisting damage to the vehicle and caused other cracks that were not preexisting.

¶6 The State presented an estimate for the cost to repair the tail light, the hole, and all cracks in the body of the vehicle totaling \$1,453.82. However, the court ordered Craig to pay restitution of \$1,200, the value of the vehicle, not the repair costs of \$1,453.82.

DISCUSSION

¶7 Craig contends that the circuit court erroneously exercised its discretion in awarding restitution in an amount equaling the value of the vehicle because the damage to the vehicle's tail light and its assembly was the only "real" damage that was "directly" caused by the defendant.

¶8 A circuit court has discretion in determining whether the defendant's criminal activity was a substantial factor in causing the damage considered at sentencing and in establishing the amount of restitution. *State v. Johnson*, 2005 WI App 201, ¶10, 287 Wis. 2d 381, 704 N.W.2d 625. This court will not reverse a discretionary decision unless the circuit court erroneously exercised its discretion. *See id.* A court properly exercises its discretion if the court applies the proper

standard of law, examines the relevant facts, and uses a demonstrated rational process to reach a conclusion that a reasonable judge could reach. *Id.*

¶9 The criminal restitution statute states in pertinent part:

(2) If a crime considered at sentencing resulted in damage to ... property, the restitution order may require that the defendant:

....

(b) If return of the property ... is ... inadequate, pay the owner ... the reasonable repair or replacement cost or the greater of:

1. The value of the property on the date of its damage,

WIS. STAT. § 973.20(2)(b)1. Thus, in a case involving property damage the circuit court has the option of ordering as restitution “reasonable repair,” “replacement cost,” or the “value of the property on the date of its damage.”

¶10 Craig argues that his criminal conduct resulted in “direct” damage only to the vehicle’s tail light and its assembly, and thus, under WIS. STAT. § 973.20(2)(b), he can be ordered to pay as restitution only the “reasonable repair or replacement cost” of the tail light and its assembly, which was approximately \$160. I reject Craig’s argument that he caused only \$160 in damage because a circuit court has authority to order restitution based on evidence that the pertinent criminal conduct was a *substantial factor* in causing the damage and not necessarily a direct cause of the damage. See *State v. Canady*, 2000 WI App 87, 234 Wis. 2d 261, 610 N.W.2d 147 (upholding circuit court’s restitution order even though defendant did not directly cause the damage to a glass apartment door, because the damage was caused by a police officer who was attempting to detain and arrest the defendant). The court in *Canady* reasoned that “[w]hile damaging

the glass door pane may not have been intended or expected on Canady's part, the natural consequences of grabbing for a metal pry bar while resisting arrest was that he would be disarmed" resulting in damage to the door. *Id.* at ¶12. Put differently, the damage at issue must have resulted from "the natural consequences of" the defendant's actions, but the defendant's actions need not have directly caused the harm. *Id.*

¶11 Based on the testimony summarized above, the circuit court did not erroneously exercise its discretion in determining that Craig's actions were a substantial factor in causing the vehicle damage, even if some of that damage was only a natural consequence of the blow he delivered to the vehicle, given the relatively poor condition of the vehicle. Presumably, if he had struck the tail light of a brand new car, there would have been less consequential damage to the body. But this is the vehicle that he decided to damage. Craig fails to explain how the court's determination regarding the extent of the effects of the blow was irrational or otherwise defective. The court applied the proper standard of law and rationally interpreted the facts to determine that the damage was a natural consequence of Craig's actions and therefore the substantial factor test was met.

¶12 Craig argues that the court also erroneously exercised its discretion in ordering restitution in an amount equaling the value of the vehicle, again arguing that he should be required to pay only "the reasonable repair or replacement cost" and that the damage that he caused to the tail light could be repaired for less than the vehicle's "full value." *See* WIS. STAT. § 973.20(2)(b). To the extent that Craig means to present a new argument that is not merely a rehash of the causation argument addressed above, I reject Craig's argument for the following reason. Under § 973.20(2)(b)1., the circuit court has the authority to order restitution for the "value of the property on the date of its damage." *See*

§ 973.20(2)(b)1. Craig has not provided me with any basis to upset the findings of the circuit court that (1) the victim here was entitled to the value of the vehicle on the date of the damage, and (2) this value was \$1,200. In ordering restitution in an amount that equals the value of the vehicle, the court properly considered the evidence presented at the restitution hearing, summarized above.

¶13 This case illustrates the flexibility that sentencing courts have under WIS. STAT. § 973.20(2)(b)1., summarized above. It apparently would have been difficult for the court to parse out from the repair estimate precisely how much it would cost to fix only the preexisting damage, separate from all damage that was a natural consequence of Craig's actions, due to the fact that the criminal conduct aggravated preexisting damage. That is, Craig used the wooden object to damage a visibly damaged car more than it had been damaged before, but it was hard to say precisely *how much* more it was damaged. Faced with these facts, the court made a rational choice from among the options provided in § 973.20(2) by settling on the value of the vehicle, an amount less than total repair costs.

¶14 For these reasons, and because Craig offers no other basis to conclude that the circuit court erroneously exercised its discretion in its restitution decision, I affirm.

By the Court.—Judgment affirmed.

This opinion will not be published. See WIS. STAT. RULE 809.23(1)(b)4.

